IN THE HIGH COURT OF JUDICATURE AT BOMBAY
SIDE JURISDICTION
CRIMINAL APPEAL NO.1072 OF 2005

Siraj Dastagir Metkari
Ravivar Peth,
Metkari Galli,
Near Kismat Chicken Centre,
Phaltan, Dist.Satara,
(Presently detained at Thane
Central Jail) ...Appellant.
V/s.

The State of Maharashtra ...Respondent.

Shri Rahul S. Kate, adv. for the Appellant.
Mrs.M.M.Deshmukh, APP for the Respondent/State.

CORAM: J.H.BHATIA, J.
DATE : 25th January, 2007.

ORAL ORDER:

1. The appellant, who was original accused nos.1 in Sessions Case No.961 of 2004 before the Sessions Court, Bombay, was convicted for the offence punishable under Sections 397 of the Indian Penal Code and was sentenced to undergo R.I. for 7 years and to pay fine of Rs.10,000/- by the judgment and order dated 6/10/2005 passed by the learned Additional Sessions Judge, Greater Mumbai. The appellant has challenged the impugned judgment and order of conviction and sentence by this appeal.

2. Prosecution case in brief is that, on 4-8-2004,

the complainant/P.W.5-Ramachal Chabilal Varun was plying his rickshaw. At about 9.30 p.m., the present appellant boarded his rickshaw to go to Kanjurmarg from Juhu. On the way in the dark, the accused/appellant requested P.W.5 Ramachal to stop the rickshaw as he wanted to urinate. Accordingly, the rickshaw was stopped. The accused and the complainant both got down to urinate. After that the accused allegedly occupied the driver's seat and asked the complainant to sit on the back seat. The accused drove the rickshaw. After covering some distance, he stopped the rickshaw and asked about the fare. Apparently, he was trying to take money from his pocket to pay rickshaw fare but in fact he took out a revolver and pointed it to head of P.W.5 Ramachal and asked him to hand over whatever money he had. Under the threat, he robbed Rs.140/- from the said rickshaw driver. In the meantime, two policemen came there and therefore, Ramachal shouted for help. The accused tried to run away but he was nabbed. Revolver was taken from his custody by the police, and thereafter, he was taken to the police where the rickshaw driver lodged report about this incident at the police station. During the personal search of the accused, an amount of Rs.140/- was recovered. Notes were identified by rickshaw driver. During the investigation, it was disclosed by the present appellant that he had taken the said

revolver from accused no.2. He also led the police and panchas to his house. However, during the search, no incriminating article was found with accused no.2. Both the accused were prosecuted. After trial, accused no.2 was acquitted but the present appellant came to be convicted.

3. In all 6 witnesses were examined including P.W.5-Ramachal, who was rickshaw driver, police constable P.W.3 Ganesh Jagannath Bhosale who had caught the accused on the spot, some panchas and other police officers. It was plea of the accused that he was actually working as a electrician and he had received an amount of Rs.5,000/- from D.W.1-Rehaman Rasul Shaikh for whom he had worked. According to the accused, the same money was snatched from him by police persons and thereafter, he was forcibly implicated in this case with the help of rickshaw driver. D.W.1-Rehaman Rasul Shaikh supported the plea of the accused that Rehaman had actually paid him an amount of Rs.5,000/- towards the electric work done by the accused for him. He also produced two documents, one was issued by licensing authority under Industries Energy and Labour Department of the Government of Maharashtra to the effect that the present appellant had passed examination of electric wireman. This certificate was dated 25-7-1997 and

another document was a license or permit to work as a electric wireman purporting to have been issued by same authority on 25-7-1997. After the defence evidence was completed, the Additional Public Prosecutor conducting the case made an application Exhibit 28 to refer the certificate for verification to the issuing authority. This application was allowed by the order dated 27-9-2005 and the documents were referred to the issuing authority. The issuing authority submitted a report to the police inspector, Kanjurmarg Police Station, which was produced before the Court by the Senior Police Inspector alongwith his covering letter dated 6-10-2005. As per the letter dated 3rd October, 2005 from the issuing authority, the license number 152333 was actually issued on 25-7-2005 i.e., long after the incident of this case had occurred. In view of this letter, the learned Trial Court rejected the complete defence story and came to a conclusion that the evidence of defence witness was not reliable. The learned counsel for the appellant points out that the letter dated 3-10-2005 received from the issuing authority through the police inspector could not be admitted in evidence unless the concerned officer was examined before the Court. According to him, the learned Trial Court committed serious error in admitting that letter in evidence and on the basis of that, rejecting the

defence evidence. According to him, this has led to miscarriage of justice and the appellant was deprived of fair trial.

4. The record of this case clearly reveals that the certificate about passing the examination and the permit or license to work as electric wireman were issued by the licensing authority under Industries and Labour Department of the Government of Maharashtra. It appears that examination was held on 5th June, 1997. On 25-7-1997, he was declared to have passed examination and certificate to that effect was issued. As per the permit no.152333, he had appeared for the examination on 5th June, 1997 and then permit was issued on 25-7-1997 indicating that this permit and the certificate about passing of the examination were issued on the same date. As the true copies of these documents were placed on record by the defence witness during the cross-examination for the first time. As the prosecution wanted to ascertain and verify whether the permit was really genuine or not, the learned APP made a request by application dated 27-9-2005 Exhibit 28 requesting the learned Trial Court to grant a permission to verify the said certificate and permit. The permission was immediately granted. No fault can be found in making such an application and passing such

order. As per the letter dated 3-10-2005 issued by the Secretary of the licensing authority, the appellant/accused had actually appeared for the examination on 5-6-1997 and had passed that examination, however, the permit no.152333 and the certificate were actually issued on 25-7-2005, the documents purport to have been issued on 25-7-1997. If the documents were issued on 25-7-1997, evidence of defence witness could not be outright rejected but if these documents were actually issued on 25-7-2005, the true copies of documents produced before the Court may be false or forged and therefore, evidence of defence witness would also become unreliable and untrustworthy.

5. The letter dated 3-10-2005 issued by the licensing authority could not be admitted in evidence merely on its production with the covering letter from the police officer. The letter could not be treated as public document which could be admitted in evidence without any formal proof. The contents of this letter were very much subject matter of the dispute and therefore, it was necessary to call the concerned officer from the licensing authority alongwith the record and to give evidence before the Court to prove that the said certificate and permit were actually issued on 25-7-2005 and not on 25-7-1997, which is the

date on these documents. Section 294 of the Cr.P.C. provides that where any document is filed before any Court by the prosecution or the accused, the other side may be called upon to admit or deny genuineness of such document. Where the genuineness of such document is not disputed, it may be read in evidence in any enquiry trial or other proceeding under this Code without proof of the signature of the person by whom it purports to be signed. Therefore, when the letter dated 3-10-2005 was produced by the prosecution alongwith covering letter dated 6-10-2005 from the police inspector, the notice could be given to the accused to admit or deny genuineness of contents of the said letter. If the accused would admit the genuineness , the prosecution would not be required to give any further evidence about the same. If the accused would deny the contents, the prosecution would be required to examine the concerned witness to prove the contents and the facts mentioned in the said letter and the documents. Even though by that time, the prosecution evidence and defence evidence was already completed, still by virtue of Section 311, the learned Additional Sessions Judge could summon the concerned officer from the licensing authority for being examined or cross-examined before the Court. He could be called as prosecution witness or the Court witness. Section 311 of the Cr.P.C. clearly provides that any

Court may,at any stage of inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case. The defence of the accused in this case was outright rejected on the basis of letter or report dated 3rd October, 2005 from the Secretary of the licensing authority. Prosecution had not called upon the accused to admit or deny the document and therefore, it was necessary for the prosecution to make request to the Court to issue summon to the said officer of the licensing authority to give evidence and and prove contents of that letter. If the prosecution did not want to call as prosecution witness, in the interest of justice and for just decision of the case, the learned Additional Sessions Judge could also call him as a Court witness and examined so that the accused would get the opportunity to cross-examine him on the relevant facts. I find that the learned Trial Court committed serious error by admitting the said letter dated 3-10-2005 from the Secretary, Licensing authority without examining the concerned officer and rejecting the defence evidence only on the basis of that letter

without any further evidence.

6. Taking into consideration the circumstances noted above, the judgment and order of conviction and the sentence awarded by the learned Additional Sessions Judge can not be sustained but at the same time, it would not be in the interest of justice to acquit the accused of the charge under Section 397. In fact, it would be in the interest of justice to examine the officer from licensing authority to give evidence before the Court as to whether the said certificate and permit were issued on 25-7-1997 or on 25-7-2005. The learned counsel for the petitioner as also the learned APP conceded that taking into consideration the peculiar circumstances of the case, it would be in the interest of justice to remand the matter back to the trial Court with the direction to examine the concerned officer from the licensing authority and thereafter to evaluate the evidence and decide the matter afresh. In my opinion, that is the only recourse available in the interest of justice.

7. Appeal is hereby allowed. The judgment and order dated 6-10-2005 passed by the learned Additional Sessions Judge convicting the accused and sentence for the offence punishable under Section 397 of the Indian

Penal Code is hereby set aside. Sessions Case No.961 of 2004 is hereby remanded back to the file of Additional Sessions Judge with the direction to summon and examine the concerned officer from the licensing authority, who had issued this certificate and permit in favour of the accused/appellant, Siraj Dastagir Metkari particularly to find out whether these documents were issued on 25-7-1997 as claimed by the accused or on 25-7-2005 as stated in the letter dated 3-10-2005 by the Secretary to the Licensing authority. The concerned officer shall be summoned to remain present alongwith relevant record and to give evidence. After recording evidence of such officer, the learned Additional Sessions Judge shall hear the arguments for both the parties and decide a case afresh as per law. It is made clear that the witnesses who are already examined by the prosecution or defence need not be recalled.

8. The accused/appellant shall be produced before the Sessions Court on 28th February, 2007.

9. As the accused is in custody for a long time, the Trial Court shall dispose off the matter as early as possible. Record and proceeding be returned to the Sessions Court, Bombay.

(J.H.Bhatia,J.)